

(b) Itemized invoices covering the cost of repairs made or equipment purchased;

(c) Abstracts of the vessel's log;

(d) Classification surveyor's report confirming vessel's classification when the repairs were made in order to insure seaworthiness.

The Master shall certify as true copies or originals, as the case may be, one copy of each repair bill, abstract of vessel's log, survey report and other documents used in support of the application for relief. If a document is written in a foreign language, it should be accompanied by a translation certified to be accurate.

**Sec. 5. General Agent's authority to effect payment of duties.**

(a) In those cases where the conditions outlined in section 3 of SRM-4 do not prevail, the General Agent shall effect payment of duties imposed by Customs and shall include the expenditure in the voyage accounts of the vessel. In those cases where the conditions as outlined in section 3 of SRM-4 do prevail, the General Agent shall exhaust every means toward obtaining remission of duty imposed.

(b) Should the General Agent fail to obtain remission of duties in such cases, he shall refer the matter to the appropriate Coast Director for his (The Director) determination as to whether further appeal to the Bureau of Customs is warranted or that payment of duty should be made by the General Agent.

NOTE: Records and supporting documents referred to in the above order, shall be retained until the completion of the audit by the General Accounting Office, at which time the Maritime Administration will take custody of the records.

[SRM-4, 16 FR 9658, Sept. 21, 1951, as amended by Amdt. 1, 18 FR 5035, Aug. 22, 1953; 21 FR 8106, Oct. 23, 1956. Redesignated at 45 FR 44587, July 1, 1980]

**PART 338—PROCEDURE FOR ACCOMPLISHMENT OF VESSEL REPAIRS UNDER NATIONAL SHIPPING AUTHORITY MASTER LUMP SUM REPAIR CONTRACT—NSA-LUMPSUMREP**

Sec.

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AUTHORITY: Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114. Interpret or apply R.S. 3709, as amended; 41 U.S.C. 5.

SOURCE: SRM-5, Revised, 18 FR 5035, Aug. 22, 1953. Redesignated at 45 FR 44587, July 1, 1980, unless otherwise noted.

**Section 1. What this order does.**

This order cancels NSA Order No. 32 (SRM-1); and outlines the procedure to be followed by the several Coast Directors, their field Ship Repair and Maintenance Staffs, the General Agents of the Authority, and the ship repair contractors in the award and performance of vessel repairs under the National Shipping Authority Master Repair Contract, NSA-LUMPSUMREP. The Coast Directors, field Ship Repair and Maintenance Staffs and the General Agents shall be referred to hereafter in this

order as representatives of the Authority.

**Sec. 2. Use of contract for competitive bid and negotiated price awards.**

(a) The NSA-LUMPSUMREP Contract is a Master form of fixed price contract and is applicable to ship repair work awarded as a result of competitive bidding or negotiation. As a general rule all work awarded under the NSA-LUMPSUMREP Contract must be awarded upon the basis of competitive bids. Revised Statute section 3709 (41 U.S.C. 5), which requires the award of contracts on the basis of competitive bids, however, permits award upon a negotiated basis in certain situations, that is, "where immediate delivery or performance is required by the public exigency."

(b) There are set forth in paragraphs (b)(1) to (3) of this section three (3) examples of situations where the negotiation of fixed price awards for the accomplishment of work under the NSA-LUMPSUMREP Contract will be permitted in lieu of competitive bidding:

(1) *Where the desired results from competitive bidding cannot be obtained.* For example, where there is doubt as to the reality of competition or the fairness or reasonableness of a low bid, all bids shall be rejected. If the ship's availability permits a new Invitation for Bids for the work in question shall be issued. If the bids received as a result of the second invitation are not considered satisfactory the bids are to be again rejected and prices of all specification items are to be negotiated with and the job awarded to the lowest bidder. If the low bidder refuses to accept the award upon the condition referred to the offer of award subject to price negotiation may be made to the next lowest bidder, etc. Negotiated awards in such cases shall be made in accordance with the conditions set forth on the invitation form, e.g., time specified, liquidated damages, etc. If a satisfactory price cannot be secured by negotiation with the bidders as herein proved an award may be made upon a negotiated basis approved in section 5 of this order.

(2) *Where the element of time is paramount.* There will be instances where expeditious ship turnarounds will ne-

cessitate the award of work without the delay involved in awarding on the basis of competitive bids. In such cases immediate negotiation for a fixed price with one contractor will be permissible. However, full consideration must be given to the factors involved in order to determine whether, under the circumstances, the time requirements make necessary the negotiation of price rather than using the competitive bid procedure. Such relevant factors are the individual ship's commitments with respect to loading berths, sailing dates, and the charter hire, etc., that might accrue in the event additional ship lay-time is required because of competitive bidding. Definite dollar and time values cannot be established as specific guides for determining when to negotiate. The individual ship and circumstances involved are the governing elements. The practice of consistently favoring one contractor where this type of repair is required will not be permitted but instead, to the maximum extent possible, all qualified contractors in the particular port shall be given the opportunity to perform work for the National Shipping Authority.

(3) *Extra items of work found subsequent to the awarding of the work covered by the original specifications.* Where extra items of work are required after the commencement of the awarded work, it is permissible to negotiate with the contractor who is performing the awarded work, for the accomplishment of such extra work under the provisions of Article 6 of the NSA-LUMPSUMREP Contract. A discussion of this procedure is set out in section 8 of this order. However, where items of extra work are found after examinations have been made as called for by the original specifications, negotiation with the contractor to perform such items of extra work shall be permitted only if the aggregate estimated cost of such items of extra work would not amount to a substantial part of the entire job. If the items of extra work amount to a substantial part of the entire job, they shall be awarded in the same manner and after consideration of the same factors as are set forth above for awarding original work.

**Sec. 3. Specifications.**

(a) It shall be incumbent upon the representatives of the Authority on each and every vessel requiring repairs for the account of the National Shipping Authority to prepare complete, detailed and fully descriptive specifications of the particulars of each repair item, identified in each particular case by the appropriate voyage number. Decisions of the Coast Directors' Ship Repair and Maintenance Staffs with respect to the need for any particular item in repair specifications shall be final. The specifications for voyage repairs shall itemize the work involved and shall be numbered consecutively and shall be arranged in accordance with the group classification set forth in section 18 of this order with the segregation by the three departments, namely, deck, engine and steward.

(b) The specifications shall in their final written form be explicit in every respect and shall include drydocking, if required, as well as all other items of work known to be required or discernible through visual inspection and examination regardless of the fact that later decision may be made to eliminate or defer some of the items of work. In no case shall an item of work, the accomplishment of which is problematical, be so identified or segregated in the specifications. Resorting to such general phraseology as "overhaul as necessary," "open up for examination and repair or renew as necessary," "repair or renew," etc., shall not be permitted in preparing and writing the specifications.

(c) Where an exact and final determination of the extent of the work cannot be ascertained until an examination has been made, the particular items involved shall so specify and the specifications with respect to said items shall be limited to such examinations as are necessary.

(d) If it is desired by the representatives of the Authority to change any item in the specifications after the specifications have been issued to bid such changes shall be reduced to writing and shall be distributed to the invited bidders at least by such time prior to the time originally specified for the opening of bids as shall reasonably permit the bidders to revise their

estimates. If determined to be necessary or desirable under the circumstances, the representative of the Authority may extend the time for opening of bids.

(e) Any exceptions taken to the specifications by a prospective bidder shall be made known to the representative of the Authority prior to the time specified for opening the bids. If it is finally determined by the representative of the Authority that the exceptions are justified, then the procedure set forth in the preceding sub-paragraph shall be followed. Exceptions accompanying bids not processed as herein prescribed, but made known at the time the bids are opened will not be acceptable, and will be a cause for rejecting such bids.

(f) When it is anticipated that the cost of a job will be in excess of a Coast Director's delegated authority, one (1) copy of specifications, and in case of bids a copy of Invitation for Bids, Instructions to Bidders and listing of contractors invited to bid shall be forwarded to the Chief, Division of Ship Repair and Maintenance, Washington, DC, simultaneously with the specifications being issued to the contractors.

(g) In all cases where materials, parts or equipment are required in connection with the performance of any particular repair item the representatives of the Authority shall utilize to the fullest possible extent spares and replacement parts stocked in Maritime Administration warehouses. Prior to arranging for the purchase or furnishing of repair parts by repair contractors, it shall be the responsibility of the representatives of the Authority awarding work to determine that the required parts are not available in the Maritime Administration warehouse in the area involved, contingent upon the urgency of the particular situation, ship's sailing schedule, etc.

**Sec. 4. Procedure for securing competitive bids.**

(a) The geographical area within which bids will be invited involves the exercise of sound administrative judgment. All the relevant factors should be considered in deciding over what areas competitive bids should be invited. Such factors will include the

scope and nature of the work, the location of the vessel, and the time and expense involved in shifting and returning the vessel to its loading berth consistent with the operating requirements.

(b) Invitations for Bids shall be sent to all contractors, within the area as determined in paragraph (a) of this section, who are considered to be financially qualified and to be capable of performing all of the work set forth in the specifications either by the utilization of their own or subcontractors' facilities. In this regard attention is invited to section 15 of this order.

(c) When inviting Bids the NSA form entitled "Invitation for Bids, Instruction for Bidders, and Specifications for Repairs, Renewals, Alterations and Additions to the Vessel \_\_\_\_\_" shall be used.

(d) Attention is called to the fact that the Invitation for Bids form includes a statement of the completion date for the work. In the event bids are invited the individual vessel's period of availability and the extent of the proposed work shall be considered in fixing a completion date that is consistent with the scope of the work involved. Consideration must be given to the fact that it will not be possible in every case to get lower bids by extending a completion date beyond the normal time required to do the work merely because the vessel's availability is exceptionally long. At the same time, care is to be exercised to insure that the repair period is not shortened, when there is no urgent need for the use of the vessel, to such an extent that it is impossible for the contractor to accomplish the work under normal working conditions. A completion date can only be fixed so as to be financially and otherwise to the best interests of the Government after due consideration has been given to all of the factors involved.

(e) The Invitations for Bids shall provide that the contractors shall submit, simultaneously with their responses to Invitations for Bids, unit prices for each item of specification work in a separate sealed envelope. Only the envelope containing the separate item prices of the contractor determined to be the low bidder shall be retained by

the representative of the Authority and shall not be opened until after the award is made. All other envelopes containing separate item prices shall be returned unopened to each contractor by the representative of the Authority. In the event the low bid is rejected, the itemized prices of the low bidder shall be returned to him in the unopened envelope. Item prices submitted by contractors will not be subject to public perusal.

(f) Vessel repair work contracted for by representatives of the National Shipping Authority is subject to the provisions of the Davis-Bacon Act, except in those cases where at the time of the issuance of the Invitations for Bids the site of the work is not known. Where bids are being invited from bidders in more than one port area, the port area in which the award will be made will not be known, and the Invitations for Bids, accordingly, must state that the work in question is not subject to the Davis-Bacon Act.

(g) The Invitations for Bids shall also include a statement of the per day liquidated damages, for the particular type vessel on which the work is to be performed.

(h) The Invitation for Bids shall state where the bids are to be opened.

(i) When Invitations for Bids are issued by a General Agent, the General Agent, at the time the invitations are issued shall make available to the local Ship Repair and Maintenance office, three (3) copies of the specifications, three (3) copies of a list of contractors to whom invitations have been sent, and three (3) copies of the Invitation for Bids.

(j) Where the scope and probable cost of the work and the time required for effecting such work are secondary as compared to the ship's time, and where the preparation of formal specifications and the issuance of formal Invitations for Bids are not practicable, the representative of the Authority may orally contact as many qualified contractors as is feasible, in order to obtain written "Spot Bids." Each contractor who indicates its intention to bid shall be fully advised as to the specific work involved and given an opportunity to inspect the vessel to enable it to prepare a bid. The contractor shall

be verbally advised of a time and place for the submission of the "Spot Bids." If such bids are invited by the General Agent, the General Agent shall also advise the Coast Director or his duly appointed representative of the time and place of opening the "Spot Bids," and if practicable, the NSA representative shall attend such opening. If submission of such spot bids is not in writing the contractors shall immediately confirm their respective Spot Bids by written tenders. The representative of the Authority shall, if requested by responsive contractors, furnish invitations for bids and supporting specifications to the contractors.

**Sec. 5. Procedure for negotiated price awards.**

(a) In the award of vessel repair work upon the basis of negotiation or request for quotation, other than work covered by a supplemental job order, the contractor shall be furnished with the information provided for in Article 1(a) of the NSA-LUMPSUMREP Contract.

(b) The contractor, within the time specified in a request for a quotation, may quote a price and shall submit itemized prices and the price breakdown provided for in Article 1(c) of the NSA-LUMPSUMREP Contract. In the event a mutually satisfactory price cannot be agreed to, a price shall be determined by the representative of the Authority making the award which shall be set out in the job order or the supplemental job order issued to the contractor. Within thirty (30) days from the receipt of such job order or supplemental job order the contractor may appeal such price to the Director of the Authority as a dispute under Article 27 of the NSA-LUMPSUMREP Contract.

**Sec. 6. Awarding of work.**

(a) Those portions of all bids reflecting the total aggregate cost of the work involved shall be opened publicly. The work shall be awarded to the contractor submitting the lowest qualified bid. The term *lowest* shall mean the bid most advantageous to the Government after evaluation of all bids by the application of differentials and any other relevant factors set forth in the Invitation

for Bids. All pertinent costs of moving the vessel from the port where said vessel is located at the time bids are invited to the port of the responsive bidders' work sites and/or plants are to be stated on the Invitation for Bids. If the vessel is scheduled to return to the same port where located at the time bids were invited, all costs of returning the vessel to that port shall also be included on the Invitation for Bids and considered in the bid evaluation.

(b) Immediately after an award of a job order or a supplemental job order on a negotiated basis a written report shall be submitted by the representative of the Authority, making the award, to the appropriate Coast Director's office stating the pertinent reasons for awarding the job on a negotiated rather than bid basis. A copy of this report must be attached to the Ship Repair Summary.

(c) When an award is made, a job order in the form attached to the NSA-LUMPSUMREP Contract shall be issued to the contractor and when awards are made in excess of the Coast Directors' Authority one copy each of all job orders and supplemental job orders and supporting specifications are to be forwarded to the Chief, Division of Ship Repair and Maintenance, Washington, DC, simultaneously with the issuance of said orders to the contractors.

**Sec. 7. Job order numbering.**

(a) The NSA-LUMPSUMREP Contract number shall be inserted in every job order and supplemental job order thereto awarded to a Contractor. The Chiefs of local Ship Repair and Maintenance offices shall give consecutive numbers starting with No. 1 to job orders awarded by them to each contractor. The General Agents shall give consecutive numbers starting with No. 1 to job orders awarded by each General Agent. Job orders and supplemental job orders covering work awarded by a General Agent shall bear the initials of the prime General Agent, as a prefix to the numeral for example, "Job Order No. USL-1." Thus, the first award made by a local Ship Repair and Maintenance office to each respective master repair contractor

shall bear "Job Order No. 1". The first award made by each General Agent to each respective master repair contractor shall also bear "Job Order No. 1" and in addition the Prime General Agents initials. Sub-agents shall use the initials of the Prime General Agent in identifying the job order number. Any additional means of numbering other than the numeral and Prime Agent's initials are not to be used. Supplemental job orders shall contain the original job order number suffixed by the letter "A" on the first supplemental job order, the letter "B" on the second supplemental job order, and so forth.

#### **Sec. 8. Extra work and changes.**

(a) At any time after the award of an original job order and during the time the work thereunder is being performed, additional or extra work or changes in the work covered by the job order may be directed by the representative of the Authority.

(b) Such additional or changed work shall be directed by a written Change Order as provided in Article 6 of the NSA-LUMPSUMREP Contract.

(c) A supplemental job order shall be issued to the Contractor covering such Change Order(s), which supplemental order shall include the agreed amount of contract price increase or decrease and any revision in the completion date of the job order work, as modified by the Change Order(s).

(d) In the event a change in the contract price or revision in the completion date cannot be agreed upon the representative of the Authority shall determine the contract price or revised completion date and issue a supplemental job order to the contractor who shall proceed with the work covered by the Change Order(s) and the Contractor may appeal such contract price or revised completion date as provided in Article 27 of the NSA-LUMPSUMREP Contract.

#### **Sec. 9. Payment.**

(a) Repair contractors invoices covering work awarded by the field staff of the National Shipping Authority:

(1) Repair Contractors will submit invoices for repair costs covered by job orders under Master Repair Contract or

work orders under WORKSMALREP Contracts, directly to the local office of the National Shipping Authority awarding the work.

(2) The local office of the National Shipping Authority will:

(i) Review repair contractors' invoices to determine that the charges have been billed in accordance with the prices provided in the job order and repair contract.

(ii) Attach to each repair contractor's invoice, a copy of the WORKSMALREP work order or job order and supplemental job order(s), if any; a signed completion certificate; and, in the case of competitive bids, abstract of bids listing the contractors who submitted bids, the bid prices and completion time specified by each contractor, the name of the contractor to whom the work was awarded, and an explanation of the basis for the award when the contract is not awarded to the lowest bidder.

(iii) Review each repair contractor's invoice and attachments to ascertain completeness of supports and whether repair items included therein have been placed under the appropriate repair group numbers as set out in section 18 and make corrections as necessary.

(iv) Forward the invoices and supports to the District Ship Repair and Maintenance office for final review.

(3) The District office shall make a final review and if in order forward the contractor's invoices and other supports relating to (i) voyage and idle status repairs to the principal office of the General Agent, and (ii) reactivation repairs and all others which do not involve General Agency operated ships to the appropriate District Finance Officer.

(4) The General Agent, upon receiving repair contractors' invoices and attachments thereto from the District Ship Repair and Maintenance office will:

(i) Review each invoice and attachments to assure that the payment authorized by the District office appears to be proper on the basis of the attachments.

(ii) Upon determination that all necessary supporting documents are attached, make payment directly to the contractor.

(5) The District Finance Officer, upon receiving repair contractors' invoices pursuant to paragraph (a)(3)(ii) of this section will process them in accordance with prescribed procedures.

(b) Repair contractors invoices covering work awarded by General Agents:

(1) Repair contractors will submit invoices for repair costs covered by job orders under Master Repair Contracts or work orders and WORKSMALREP contracts directly to the principal office of the General Agent or authorized Sub-Agent contracting for the ship repair work.

(2) The General Agent or authorized Sub-Agent, upon receipt of an invoice from a contractor, will follow the procedure outlined in paragraph (a) (2)(i thru iii) and (4)(ii) of this section.

[SRM-5, Rev., 18 FR 5035, Aug. 22, 1953, as amended at 33 FR 5952, Apr. 18, 1968. Redesignated at 45 FR 44587, July 1, 1980]

#### **Sec. 10. Bonds.**

(a) All bids in response to an Invitation for Bids and all quotations in response to a request for a quotation in excess of \$2,000, shall be accompanied by a guaranty or a bid bond in a sum equal to twenty-five (25) percent of such bid or quotation to insure the acceptance of the job order covering the awarded work and the furnishing of the performance and payment bonds required by Article 14 of the NSA-LUMPSUMREP Contract. The standard Government form of bid bond (Standard Form 24 Revised November 1950) shall be used.

(b) In compliance with the performance bond and payment bond requirements of Article 14 of the NSA-LUMPSUMREP Contract, the standard form of individual performance bond (Standard Form 25 Revised November 1950) and the standard form of individual payment bond (Standard Form 25A Revised November 1950) respectively, shall be used. Such bonds (in the respective penal sums of 50 percent of the respective job order contract prices but if the job order contract price is in excess of \$1,000,000 in the penal sum of 40 percent of such job

order contract price) shall guarantee the Contractor's performance and payment obligations in connection with the work covered by an original job order awarded on either competitive bid or negotiated basis, as that work may be modified by supplemental job orders to such original job orders.

(c) The individual bid, performance and payment bonds shall be submitted by the contractors to the awarding offices (General Agents or local offices of NSA) to verify the correctness of the penalty amount, contract and job order numbers, etc. The individual bonds shall then be forwarded by the awarding office to the office of the appropriate Coast Director for final action and approval pursuant to existing regulations.

(d) For the convenience of contractors, in lieu of submitting individual bid, performance and payment bonds they may file with the Authority approved annual or blanket bid, performance and payment bonds covering the Contractor's bond obligations under job orders (as such job orders may be modified by supplemental job orders) awarded under said contracts in such annual period. Annual bonds shall be submitted by the Contractors or their surety representative to the appropriate Coast Director's office for clearance pursuant to existing regulations. In this regard all annual bonds must be of the open penalty type.

(e) No repair voucher (progress or final) where bond coverage is required shall be passed for payment until such time as the required bid, performance and payment bonds have been given final clearance.

#### **Sec. 11. Guarantee obligations.**

(a) Under the provisions of Article 10 of the NSA-LUMPSUMREP Contract the Contractor's guarantee liability extends to defects and deficiencies in the Contractor's work developing within sixty (60) days from the date of the acceptance of all the work and the accepted redelivery of the vessel to the Authority.

(b) Notice of such defects and deficiencies must be given to the Contractor not later than ninety (90) days after the acceptance of the work.

(c) As soon as practicable, after the acceptance of work performed under a job order, and the supplemental job orders thereto, the office awarding the job order shall furnish to the General Agent two copies of the specifications, job order and supplemental job orders, together with a statement of the date of the expiration of the Contractor's guarantee responsibility with respect to some work.

(d) The General Agent shall during the period of the Contractor's guarantee responsibility screen all deficiencies and defects and repair items and list separately against the respective specifications, all items which represent defects or deficiencies in the Contractor's work.

(e) In order that the Contractor may be notified of such defects and deficiencies prior to the expiration of the 90-day notice period, the General Agent, particularly with respect to vessels in foreign ports or vessels which may be at sea, shall instruct the Master of the respective vessel to forward the information with respect to defects and deficiencies in the Contractor's work to the General Agent's home office by the most expeditious manner of communication.

(f) In connection with all deficiencies and defects, referred to in paragraph (d) of this section, the General Agent shall immediately notify the Contractor and the local Ship Repair and Maintenance Office Head in the vessel's port of call with copies of such notification to the Chief, Division of Ship Repair and Maintenance in Washington, DC, in all cases and to the Chairman, Trial and Guarantee Survey Boards, if the total contract price is equal to or in excess of \$100,000. If practicable, the local Ship Repair and Maintenance Office Head shall arrange to view the defective or deficient work in question and, if possible, shall secure the correction of such defects or deficiencies by the Contractor in question.

(g) The General Agent, and the representative of the local Ship Repair and Maintenance staff, who acted under the provisions of paragraph (e) of this section promptly shall file with the Chief, Division of Ship Repair and Maintenance in Washington, DC, and

also with the Chairman, Trial and Guarantee Survey Boards, if the total contract price equals or exceeds \$100,000, separate or concurring reports setting out the defects and deficiencies, describing the actual conditions found, causes of failure, and the disposition of each defect or deficiency item.

#### **Sec. 12. Disposition of removed equipment and scrap.**

(a) Article 8 of the NSA-LUMPSUM REP Contract provides that any ship equipment, fuel, lube oil, supplies, stores, furniture, fixtures, salvage and other movable property removed from the vessel is the property of the United States and shall be disposed of in such manner as the Authority may direct within sixty (60) days from the date of the completion of the work. The representative of the Authority, by appropriate item in the specifications, shall cause the Contractor to segregate all equipment, salvageable material and scrap, removed from a vessel in the performance of repairs, in such a manner as to be readily identifiable, and shall submit a list thereof to the local Property and Supply office which is responsible for arranging for retention, disposal, etc., of said equipment, material, and scrap. A copy of the listing is to be attached as a support to the Ship Repair Summary (MA-159).

(b) After the 60-day period, if no direction for disposal is given the Contractor, the Contractor shall store and protect, in the shipyard or outside of the shipyard at its election, such property of the United States, for the additional period directed by said local Property and Supply office who shall furnish a copy of such written direction to the representative of the Authority. The increased contract price for the cost of the storage for such additional period shall be covered by purchase order prepared by the local Property and Supply office.

(c) All scrap removed from the vessel shall be the property of the United States and shall be handled as provided in paragraph (b) of this section: *Provided, however*, That any scrap or salvage may, upon the written approval of the local Property and Supply office,



be purchased or disposed of by the Contractor at the prevailing market price, or at not less than the fair value thereof in the absence of an established market therefor. The net sales price of the scrap or salvage disposed of by the Contractor shall be promptly paid to the office of the District Finance Officer, or at the option of the office of the District Finance Officer, shall be credited against the moneys due or to become due the Contractors.

[SRM-5, Rev., 18 FR 5035, Aug. 22, 1953, as amended at 33 FR 5952, Apr. 18, 1968. Redesignated at 45 FR 44587, July 1, 1980]

### **Sec. 13. Insurance.**

Article 9 of the NSA-LUMPSUM REP Contract sets forth the Contractor's liabilities and obligations with respect to awarded work. Said Article 9 requires that the Contractor shall maintain insurance to cover such liabilities and obligations. Evidence of such insurance shall be submitted to the Chief, Division of Insurance, Washington, DC, by the contractors for approval.

### **Sec. 14. Anti-Kickback and Davis-Bacon Acts.**

(a) All work awarded under the NSA-LUMPSUMREP Contract is subject to the provisions of the Anti-Kickback Act, and is also subject to the provisions of the Davis-Bacon Act (except in those cases where the Invitations for Bids or job order state that the work covered thereby is not subject to the Davis-Bacon Act). Article 24 of the NSA-LUMPSUMREP Contract requires the compliance of Contractor and its subcontractors with the applicable provisions of said acts. In this respect the Contractor agrees in the NSA-LUMPSUMREP Contract to comply with the regulations of the Secretary of Labor made pursuant to the Anti-Kickback Act.

(b) The Contractor shall, as provided in Article 24(a) of the NSA-LUMPSUM REP Contract, post at the site of the work the wage determination decision of the Secretary of Labor as provided in said Article 24(a).

(c) It shall be the responsibility of the representative of the Authority awarding the work to determine that the Contractor has made the postings

required by Article 24(a) of the NSA-LUMPSUMREP Contract.

(d) In lieu of submitting weekly certified copies of all payrolls to the Authority, as provided in Article 24(d) of the Master LUMPSUMREP Contract the Contractor shall maintain his weekly payrolls for a period of three years and submit weekly an affidavit that the payrolls of the Contractor for the preceding week are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor and that the classifications set forth for each labor mechanic conforms with the work he performed. The Contractor shall also submit, and shall be responsible for the submission by its subcontractors of the Anti-Kickback Act affidavits as provided in Article 24(f) of the Master LUMPSUMREP Contract. The Contractor shall submit one copy of each of the weekly payroll and Anti-Kickback Act affidavits to the Records Administration Section, Maritime Administration, Washington 25, DC.

(e) The representative of the Authority shall require Contractors, pursuant to the provisions of Article 24(d) of the NSA-LUMPSUMREP Contract, to classify or reclassify any class of laborers or mechanics employed on National Shipping Authority contract work and not listed in the Secretary of Labor's decision (schedule of wages). A report of such cases shall be forwarded to the District Ship Repair and Maintenance office for transmittal to the Office of Maritime Labor Policy.

(f) The representatives of the Authority shall be responsible for establishing procedures insuring that Contractors are complying with the Davis-Bacon Act and in cases of non-compliance withhold payment of contractors' invoices.

(g) The following certification shall be inserted by all contractors on all invoices rendered covering work awarded under the Master Repair Contract subject to the Anti-Kickback and Davis-Bacon Acts.

I hereby certify that in performing the work for which the invoice was rendered that all applicable terms and conditions of the Anti-Kickback and Davis-Bacon Acts as provided

in the Master Repair Contract and regulations of the Department of Labor have been complied with.

#### Sec. 15. Subcontracts.

Under Article 29 of the NSALUMPSUMREP Contract, the Contractor is authorized to subcontract portions of the work. However, the Contractor must obtain prior approval from the representative of the Authority, awarding the work, for each subcontract in an amount exceeding 10 percent of the contract price for the work covered by a job order or supplemental job order.

#### Sec. 16. Liquidated damages.

(a) The liquidated damages payable for each calendar day of delay shall be placed on each job order and supplemental job order whether awarded on a competitive bid or negotiated basis.

(b) The completion certificates are to contain the date on which work is actually completed, whereas the job order and supplemental job orders are to contain a completion date based on a fair and reasonable estimate of time to be allowed the contractor to perform the work. Thus, the difference between the completion date specified on the job order or supplemental job orders and on the completion certificates will be the period for which liquidated damages are assessed. If an extension of an original completion date is considered justifiable, the completion certificates are to bear in detail in the space provided for "exceptions" the reasons why the completion dates were extended beyond that specified in the original job orders. The face of the Ship Repair Summaries (MA-159) shall reflect the amounts of liquidated damages. The penalty amount shall be deducted from the invoice prior to payment for the work involved.

[18 FR 5035, Aug. 22, 1953; 18 FR 5294, Sept. 2, 1953. Redesignated at 45 FR 44587, July 1, 1980]

#### Sec. 17. Performance of work resulting from damage sustained while undergoing repairs.

(a) When damage is sustained by a vessel during performance of repairs under the NSA Master Contract, negotiations for accomplishment of work

necessary to correct such damage are to be made with the repair contractor involved, if practicable, and a job order issued to the contractor for the repair of damage. Such job orders are to be assigned a new number and are not to be supplemental to the original award. The following "without prejudice" clause is to be made a part of and place on each job order issued for the performance of work discussed in this section.

It is understood and agreed that the work covered by this job order is awarded and accepted without prejudice to, or waiver of, any rights of the United States or the Contractor.

(b) If it is determined that the contractor is at fault and the contractor refuses to accept the responsibility, the procedure outlined in Article 27 of the master repair contract shall be followed. It is to be understood that the payment of this type of account is to be withheld pending establishment that the contractor involved is relieved of all responsibility for the damage.

(c) In the event other than the original contractor effects the damage repairs immediate arrangements are to be made by and through the General Agent to collect from the contractor considered responsible for the damages.

(d) A damage survey is to be conducted in all such cases and a report thereon submitted to the Chief, Division of Ship Repair and Maintenance, Washington, DC.

#### Sec. 18. Group classification.

In the preparation of specifications, Job Orders, Supplemental Job Orders and WORKSMALREP Contracts costs by Group Numbers as set forth and described below are to be inserted thereon:

Number	Classification
41	<i>Maintenance Repairs</i> (deck, engine and stewards department repairs resulting from wear and tear).
42	<i>Original installation of, repairs to, and removal of national defense features.</i>
44	<i>Conversions</i> (conversion of vessels to troop carriers, hospital ships, and for other special purposes).
51	<i>Alterations, Additions and Betterments</i> (additional equipment, such as, spar decks, heavy lift equipment, change of cargo or passenger space, increasing speed of vessel, and structural changes).

Number	Classification
52	<i>Strengthening of Newly Constructed Vessels</i> (strengthening of vessels according to program).
54	<i>Damage Repairs</i> (claimed as a result of enemy action, heavy weather, stranding, collision, fire, stevedore damage, ice damage, and other damages).
	NOTE: All items chargeable to each separate casualty to be properly identified and segregated both with respect to casualty and cost.
63	<i>Builders' and Vendors' Guaranty Work</i> (repairs and replacements chargeable to builders and vendors of equipment—separate cost to be furnished for each item).
64	<i>Repair Contractors' Guarantee Items</i> (repairs to correct deficiencies due to faulty workmanship and/or materials incident to prior repairs performed under provisions of Master Repair Contract where responsible contractor did not effect the necessary corrections).
65	<i>Other Costs</i> (temporary lights, garbage disposal, tugs to shift vessel while in contractors' yard, and other miscellaneous work requiring distribution of costs over more than one group).
66	<i>Miscellaneous Expenses Applicable to Voyage Operating Expense</i> (removal of cargo debris, fresh water when not required for testing purposes, cleaning cargo and other tanks where no repairs or alterations are involved, and other similar expenses).
67	<i>Preparation of Vessels for Lay-up</i> (stripping, draining and preservation. No repairs to be included in this grouping).

### Sec. 19. Ship Repair Summaries.

(a) Ship Repair Summaries shall be prepared on Form MA-159 by the General Agents and local offices of the Authority covering all work performed under their respective jurisdiction and submitted to the District Ship Repair and Maintenance office involved. The summaries must be properly identified and contain the correct cost breakdown as set forth in this order. If the summary covers work other than repairs related to a voyage, the summary must so state, e.g., reactivation, lay-up, idle status, etc. The District Ship Repair and Maintenance office shall review the summaries and supports to ascertain that they have been properly prepared in all respects. The originals of all summaries unsupported shall be forwarded by the District offices to the Chief, Operating Cost Control Branch, Office of Ship Operations, National Shipping Authority, Washington, DC, and two copies each of all summaries one of which is to be supported by one copy each of job orders, supplemental job orders, invitation for bids, speci-

fications, invoices, itemized prices, completion certificates, ABS invoices and reports, purchase orders, price warehouse delivery tickets, property removal notices, WORKSMALREP Contracts, a statement that bid, performance and payment bonds were received and approved, abstract of bids containing the list of contractors invited to bid and response of each, an explanation of the basis for an award when the contract is not awarded to lowest bidder, listing of scrap, salvageable material and equipment removed from a vessel, etc., shall be forwarded to the Chief, Division of Ship Repair and Maintenance, Washington, DC.

(1) Within 60 days after termination of the respective voyages for work awarded by General Agents.

(2) Within 30 days after completion of all work awarded by the Local Offices within a port area.

(b) In the event invoices for particular services are not available such as, American Bureau of Venders Inspectors fees, the summary is nevertheless to be prepared as outlined in this order and estimated costs for the missing billings set forth on the summary. Upon receipt of said invoices a supplementary summary shall promptly be prepared and distributed as outlined in this section.

(c) If no work is performed under a General Agent's jurisdiction for a particular voyage, the General Agent must submit for distribution as stated herein a repair summary stating across the face that no repairs, either foreign or domestic, were performed for the particular voyage involved.

### Sec. 20. Reports of awards.

(a) The Coast Directors shall submit to the Chief, Division of Ship Repair and Maintenance, Washington, D.C., a monthly listing of all awards made under their jurisdiction. This listing shall reflect individually the complete contract number, contractor, vessel, type of award, e.g., negotiated or bid, costs and repair period. This listing shall be submitted substantially in the following form:

Contractor	Contract No.	Vessel	Award	Amount	Start	Completed
Steamboat Repairs, Inc. ....	MA-600 J.O.1	John Doe ....	Bid .....	\$15,000	Jan. 1, 1953 .....	Jan. 10, 1953

Contractor	Contract No.	Vessel	Award	Amount	Start	Completed
Steamboat Repairs, Inc ....	MA-600 J.O.1A.	John Doe ....	Negotiated .....	1,000	.....	Jan. 11, 1953

(b) If no work was awarded during a reporting period, a report to that effect is to be made.

(c) The Coast Directors are to attach to their monthly reports, the originals of the monthly reports submitted by the General Agents pursuant to section 3(d) of NSA Order 34 (SRM-3, Revised).

#### Sec. 21. Delegations of authority.

(a) The term *authorized representative of the Authority* appears in several of the contract provisions of the NSA-LUMPSUMREP Contract. The respective representatives of the authority are the "authorized representative of the Authority" for the respective contract provisions as set out in this section:

(b) Articles 1 and 2—Chief, Division of Ship Repair and Maintenance, Coast Directors, Chiefs of District Ship Repair and Maintenance offices, Chiefs of Local Ship Repair and Maintenance offices, and General Agents (within the General Agents' contract limitations); Article 3—Maritime Administration Marine Surveyors, Chief, Division of Ship Repair and Maintenance, Coast Directors, Chiefs of District Ship Repair and Maintenance offices, Chiefs of Local Ship Repair and Maintenance offices, and General Agents (within the General Agents' contract limitations); Article 4—Coast Directors, Chief, Division of Ship Repair and Maintenance, Chiefs of District Ship Repair and Maintenance offices, Chiefs of Local Ship Repair and Maintenance offices, and General Agents; Article 5—Maritime Administration Marine Surveyors and General Agents; Article 6—Coast Directors, Chief, Division of Ship Repair and Maintenance, Chiefs of District Ship Repair and Maintenance offices, Chiefs of Local Ship Repair and Maintenance offices, and General Agents (within the General Agent's contract limitations); Article 7—Chiefs of District Ship Repair and Maintenance Offices, Chiefs of Local Ship Repair and Maintenance Offices, and Maritime Administration Marine Sur-

veyors; Article 18 (d)—Coast Directors; Chief, Division of Ship Repair and Maintenance, Chiefs of District Ship Repair and Maintenance offices, Chiefs of Local Ship Repair and Maintenance offices, and General Agents in connection with work awarded by General Agents; Article 27—Coast Directors, Chiefs of District Ship Repair and Maintenance offices and Chiefs of Local Ship Repair and Maintenance offices.

NOTE: Records and supporting documents referred to in the above order, shall be retained until the completion of the audit by the General Accounting Office, at which time the Maritime Administration will take custody of the records.

[SRM-5, Rev., 18 FR 5035, Aug. 22, 1953, as amended at 21 FR 8106, Oct. 23, 1956. Redesignated at 45 FR 44587, July 1, 1980]

### PART 339—PROCEDURE FOR ACCOMPLISHMENT OF SHIP REPAIRS UNDER NATIONAL SHIPPING AUTHORITY INDIVIDUAL CONTRACT FOR MINOR REPAIRS—NSA-WORKSMALREP

Sec.

1. What this order does.
2. Description of NSA-WORKSMALREP Contract.
3. When the NSA-WORKSMALREP Contract may be used.
4. Persons authorized to make awards under NSA-WORKSMALREP Contract.
5. Responsibility for duplicating copies of NSA-WORKSMALREP Contract.

AUTHORITY: Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114. Interpret or apply R.S. 3709, as amended; 41 U.S.C. 5.

SOURCE: SRM-6, Revised, 18 FR 5040, Aug. 22, 1953. Redesignated at 45 FR 44587, July 1, 1980, unless otherwise noted.

#### Section 1. What this order does.

This order authorizes the use of NSA-WORKSMALREP individual contract for minor repairs to Maritime Administration owned or controlled vessels. The procedure to be followed by the field personnel of the Authority,